

1 THE HONORABLE RICARDO S. MARTINEZ
2
3
4
5
6

7
8
9
10
11 UNITED STATES DISTRICT COURT
12 WESTERN DISTRICT OF WASHINGTON
13
14

15 CECIL THOMAS; PAMELA THOMAS,
16
17 Plaintiffs,

18 vs.
19
20 OCWEN LOAN SERVICING, LLC;
21 DEUTSCHE BANK NATIONAL TRUST
22 CO.; QUALITY LOAN SERVICE CORP.
23 OF WASHINGTON.
24
25 Defendants.

26 Case No. : 2:17-CV-01222-RSM
27
28 DEFENDANT QUALITY LOAN
29 SERVICE CORP. OF
30 WASHINGTON'S MOTION FOR
31 SUMMARY JUDGMENT
32
33 Note on Motion Calendar:
34 March 8, 2019
35 Without Oral Argument

36 COMES NOW defendant Quality Loan Service Corp. of Washington
37 (“Quality”) and moves for summary judgment and dismissal under FRCP 56.
38
39

40 I. RELIEF REQUESTED
41
42 An order of summary judgment dismissing Quality.

43 II. STATEMENT OF FACTS
44
45

46 On March 6, 2006 Cecil Thomas and Pamela Thomas hereafter (“Plaintiffs”)
47 purchased the subject real property of 15550 148th Ave NE Woodinville, WA 98072
48 a/k/a 15844 148th Ave NE Woodinville, WA 98072 with a \$400,000.00 mortgage
49 loan secured by a Deed of Trust. *See, DKT #33 Exhibit 2* Herbert-West Decl.

50 **Exhibit A, Exhibit B.** On November 2, 2016 Ocwen Loan Servicing, LLC
51 hereinafter (“Ocwen”) issued a notice to Plaintiffs concerning the underlying default
52 on the subject loan totaling \$82,530.21 which advised if the account was not brought

1 current in a timely manner the loan would be referred for foreclosure. *See, DKT #33*
 2 **Exhibit 2** Herbert-West Decl. **Exhibit C.**

3 On December 15, 2016 Quality received a referral for a non-judicial
 4 foreclosure of the Plaintiffs' Deed of Trust from Ocwen to advance a foreclosure on
 5 behalf of DEUTSCHE BANK NATIONAL TRUST COMPANY as Trustee for
 6 INDYMAC INDEX MORTGAGE LOAN TRUST 2006-AR4, MORTGAGE PASS-
 7 THROUGH CERTIFICATES Series 2006-AR4 hereinafter ("Deutsche Bank").

8 **DKT #33 Exhibit 1** Herbert-West Decl. ¶ 5. The foreclosure referral received by
 9 Quality for the subject Deed of Trust included a copy of a recent Demand Letter
 10 issued by Ocwen dated November 2, 2016 outlining the basis of the default in support
 11 of the foreclosure referral. **DKT #33 Exhibit 1** Herbert-West Decl. ¶ 6, *See also,*
 12 **DKT #33 Exhibit 2** Herbert-West Decl. **Exhibit C.**

13 In processing non-judicial foreclosures Quality employees do not have access
 14 to Ocwen's accounting system. **DKT #33 Exhibit 1** Herbert-West Decl. ¶ 7. Quality
 15 is required to communicate with Ocwen primarily through an electronic system
 16 called Equator. *Id.* Quality relies on Ocwen to provide the Trustee information
 17 related to a subject default associated with a request for foreclosure. *Id.* On December
 18 22, 2016, in support of the referral for non-judicial foreclosure Quality received a
 19 Payoff Quote from Ocwen for the Plaintiffs' loan which contained a total amount
 20 due of \$414,052.43 with a good through date of January 13, 2017. **DKT #33 Exhibit**
 21 **1** Herbert-West Decl. ¶ 8. The Trustee used this information as a basis to confirm the
 22 loan was in default and to advance the requested foreclosure. *Id. See also, DKT #33*
 23 **Exhibit 2** Herbert-West Decl. **Exhibit D.**

24 On January 23, 2017, Ocwen as Attorney in Fact for Deutsche Bank executed
 25 a Declaration of Ownership declaring Deutsche Bank to be the actual holder of the
 26 Thomas Promissory Note. **DKT #33 Exhibit 1** Herbert-West Decl. ¶ 9. *See also,*
 27 **DKT #33 Exhibit 2** Herbert-West Decl. **Exhibit E.** The information in the
 28 Declaration of Holdership received by Quality was consistent with the information

1 in the foreclosure referral received by the Trustee from Ocwen. **DKT #33 Exhibit 1**
 2 Herbert-West Decl. ¶ 9. The following day, on January 24, 2017, Deutsche Bank
 3 appointed Quality as Successor Trustee pursuant to an Appointment of Successor
 4 Trustee recorded February 3, 2017 in King County under Auditor's File No.
 5 20170203000038 (the "Appointment"). **DKT #33 Exhibit 2** Herbert-West Decl.
 6 **Exhibit F.**

7 In preparing to issue a Notice of Default under RCW 61.24.030(8) Quality
 8 received a both a Payoff Quote and Reinstatement Quote from Ocwen on February
 9 16, 2017 for the Plaintiffs' loan. **DKT #33 Exhibit 1** Herbert-West Decl. ¶ 11, ¶ 12.
 10 *See also,* Herbert-West Decl. **DKT #33 Exhibit 2 Exhibit G, Exhibit H.** The
 11 Trustee used this information as a basis to again confirm the loan was in default prior
 12 to issuing the underlying Notice of Default. *Id.* On February 21, 2017, Quality caused
 13 a Notice of Default to be prepared and mailed pursuant to the Deed of Trust Act.
 14 **DKT #33 Exhibit 1** Herbert-West Decl. ¶ 13. On April 11, 2017, Quality executed
 15 and issued a Notice of Trustee's Sale causing it to be recorded April 11, 2017 in King
 16 County under Auditor's File No. 20170411001651. **DKT #33 Exhibit 1** Herbert-
 17 West Decl. ¶ 14. The Trustee's Sale was noticed to be held August 11, 2017. *Id.*

18 On May 5, 2017, Quality placed the Plaintiffs' non-judicial foreclosure on an
 19 internal hold to review and escalate the issues raised by the borrower's counsel
 20 concerning the default to Ocwen. **DKT #33 Exhibit 1** Herbert-West Decl. ¶ 15.
 21 Quality contacted Ocwen and requested confirmation that the loan was in default. *Id.*
 22 On June 5, 2017, Ocwen confirmed the loan remained in default and advised the
 23 Trustee to remove their internal hold and to proceed with advancing the non-judicial
 24 foreclosure. **DKT #33 Exhibit 1** Herbert-West Decl. ¶ 16. The original Trustee's
 25 Sale date August 11, 2017 was postponed by Quality on August 10, 2017 for a period
 26 of two weeks under an exercise of its discretionary authority pursuant to RCW
 27 61.24.040(10) to allow the Plaintiffs the opportunity to seek an order restraining sale.
 28 **DKT #33 Exhibit 1** Herbert-West Decl. ¶ 17. On December 4, 2017, Quality

1 executed and issued a Notice of Discontinuance of Trustee's Sale causing it to be
 2 recorded December 4, 2017 in King County under Auditor's File No.
 3 20171204002002. **DKT #33 Exhibit 1** Herbert-West Decl. ¶ 18, *See also, DKT #33*
 4 **Exhibit 2** Herbert-West Decl. **Exhibit K.** In the (13) thirteen months since the
 5 Trustee's Sale was discontinued by Quality, no Trustee's Sale has been held and no
 6 other Notices of Trustee's Sale have been issued and advanced as to the Plaintiffs'
 7 subject property 15844 148th Ave NE Woodinville, WA 98072 secured under the
 8 Plaintiffs' Deed of Trust by Quality. **DKT #33 Exhibit 1** Herbert-West Decl. ¶ 19.
 9 Although this information was both within the public record and included within
 10 Quality's Response to Plaintiff's Motion for Summary Judgment *See, DKT #33*
 11 **Exhibit 1** ¶ 18; **Exhibit 2, Exhibit K.** Plaintiffs on August 9, 2018 filed within their
 12 Amended Complaint allegations that Quality has refused to provide any indication
 13 that it would stop the foreclosure sale. **DKT #35** Amended Compl. ¶ 36. At the time
 14 of the filing of the Amended Complaint, the Trustee's Sale had been cancelled for
 15 over (8) eight months and not actively being advanced by Quality.

16 For reasons discussed below, there are no genuine issues of material fact in
 17 dispute and the Plaintiffs have no claims for relief as against Quality. Quality should
 18 be dismissed with prejudice and without leave to amend. In this action, Plaintiffs
 19 have brought suit against three Defendants: Ocwen Loan Servicing, LLC ("Ocwen"),
 20 Deutsche Bank N.A. ("Deutsche Bank") and Quality Loan Service Corporation of
 21 Washington ("Quality"). The suit alleges Quality [the non-judicial foreclosure
 22 Trustee under the Thomas Deed of Trust] is a Debt Collector. That as a Debt
 23 Collector, Quality violated the Fair Debt Collections Practices Act ("FDCPA").
 24 Additionally the Amended Complaint alleges Quality violated its fiduciary duty
 25 owed to the Plaintiffs and also violated the Washington Consumer Protection Act
 26 pursuant to RCW 19.86 based upon Plaintiffs' information and belief that the
 27 attorneys and employees of Quality have access to Ocwen's accounting system and
 28 did not cancel the Trustee's Sale advanced. **DKT #35** Amended Compl. ¶ 33.

1 The record before this Court indicates that (1) Quality does not have access to
2 Ocwen's accounting system and that Quality was provided information from Ocwen
3 that the subject loan was in default. *See, DKT #33 Exhibit 1* Herbert-West Decl. ¶
4 7 *See also DKT 41 Answer ¶ 33.* (2) Quality's actions do not define the Trustee as a
5 Debt Collector for purposes of the FDCPA as Quality's principal business is
6 enforcing security interests only. (3) Quality does not owe a fiduciary duty to the
7 Plaintiffs but by statute expressly owes a duty of good faith to both the Plaintiffs and
8 other Defendants pursuant to RCW 61.24.010(4). (4) Quality based on an existing
9 dispute existing between the parties moved the original sale date under an exercise
10 of its duty of good faith. (5)The Trustee's Sale was discontinued December 4, 2017
11 and a Trustee's Sale has not be completed or advance since the cancellation of the
12 previously advanced Trustee's Sale. There are no genuine issues of material fact and
13 dismissal of Quality is appropriate as a matter of law

III. EVIDENCE RELIED UPON

1. The Amended Complaint and the undisputed facts this court may take judicial notice of;
 2. Declaration of Sierra Herbert-West with attached exhibits.
 3. Records and files herein.

IV. LEGAL AUTHORITY

Summary judgment is appropriate where "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FRCP 56(a). Here, summary judgment is appropriate in favor of Quality. There are no genuine issues of material fact in dispute and the Plaintiffs have no claims for relief as against Quality, therefore Quality should be dismissed with prejudice.

26 | // /

27 | // /

28 | //

V. ARGUMENT

A. QUALITY IS NOT A DEBT COLLECTOR, 15 U.S.C. § 1692A(6)(F)
EXCLUDES FROM THE TERM "DEBT COLLECTOR" AN ENTITY
WHOSE ACTIVITIES ARE "INCIDENTAL TO A BONA FIDE
ESCROW ARRANGEMENT."

As to the allegation Quality is a “debt collector” under established Ninth Circuit case law Quality does not fall under the FDCAP’s general definition of a “debt collector,” as the FDCPA imposes liability only when an entity is attempting to collect debt. For the purposes of the FDCPA, the word ‘debt’ is synonymous with ‘money.’” *Ho v. ReconTrust Co., NA*, 840 F.3d 618, 621 (9th Cir. 2016) (citing 15 U.S.C. §§ 1692a(5), 1692(e)). The object of foreclosure, however, is to retake and resell a security, not to collect money. *Id.* Indeed, “[f]oreclosing on a deed of trust is an entirely different path’ than ‘collecting funds from a debtor.’” *Id.* at 621 (quoting *Hulse v. Ocwen Fed. Bank*, 195 F. Supp. 2d 1188, 1204 (D. Or. 2002)). Thus, the FDCPA applies to foreclosure activities only through the limited provisions of Section 1692f(6). *See Mashiri v. Epstein Grinnell & Howell*, 845 F.3d 984, 990 (9th Cir. 2017) (“[W]here an entity is engaged solely in the enforcement of a security interest and not in debt collection . . . it is subject only to § 1692f(6) rather than the full scope of the FDCPA.”). Section 1692f(6) prohibits, in pertinent part, the “[t]aking or threatening to take any nonjudicial action to effect dispossession or disablement of property if . . . there is no present right to possession of the property claimed as collateral through an enforceable security interest.” 15 U.S.C. § 1692f(6)(A); *see Ho*, 840 F.3d at 622.

Plaintiffs' FDCPA claim against Quality is based on Quality's purported conduct in commencing and refusing to cancel the previously advanced Thomas non-judicial foreclosure under 15 U.S.C. § 1692k. **DKT 35** Amended Compl. ¶ 44, ¶ 45. Section 15 U.S.C. § 1692k does not apply to Quality as Quality is not a Debt Collector as Quality's principal business is enforcing security interests only. Plaintiffs' FDCPA claim is based upon Plaintiffs' information and belief that the

1 attorneys and employees of Quality have access to Ocwen's accounting system.
 2 **DKT 35** Amended Compl. ¶ 33. Quality does not. The record before this Court
 3 indicates that this and other allegations concerning Quality are without merit. As to
 4 this subject property, a Trustee's Sale has not been held and is not currently being
 5 advanced. Upon receiving a notice of dispute Quality placed its file on an internal
 6 hold and contacted the loan servicer to confirm the default status. The record
 7 indicates, Quality had sufficient evidence and information at the time the previous
 8 nonjudicial foreclosure was advanced to indicate Ocwen and Deutsch Bank had a
 9 present right to possession of the property claimed as collateral through an
 10 enforceable security interest.

11 Quality employees do not have access to Ocwen's accounting system. For
 12 Quality to obtain information on a subject loan Quality must communicate with
 13 Ocwen and relies on Ocwen to provide the Trustee information related to a subject
 14 default associated with a request for foreclosure. *See, DKT #33 Exhibit 1* Herbert-
 15 West Decl. ¶ 7 *See also DKT #30 ¶ 27, DKT #41 ¶ 33.* Also both before and during
 16 the advancement of the Plaintiffs' foreclosure, Quality received information from
 17 Ocwen that the Plaintiffs' loan was in default. *See, DKT #33 Exhibit 2* Herbert-
 18 West Decl. Ex. C., Ex. D., Ex. G., Ex. H. *See also DKT #33 Exhibit 1* Herbert-West
 19 Decl. ¶ 16. The Plaintiffs' own declaration supports the Trustee's position in that
 20 Plaintiffs allege at or around May of 2014 when Ocwen began servicing the
 21 Plaintiffs' loan, Ocwen alleged the loan was in default. In addition although Plaintiffs
 22 do not provide a date, Plaintiffs allege Ocwen rejected the payments tendered and
 23 returned those payments to the Plaintiffs. *See DKT #6* Thomas Decl. ¶ 9, 10, 11, 15.
 24 The allegation that Ocwen had declared the Plaintiffs in default and had first begun
 25 refusing the payments tendered by Plaintiffs appears to begin (31) thirty one months
 26 prior to Ocwen's referral to Quality to advance a non-judicial foreclosure December
 27 15, 2016. *See DKT #33 Exhibit 1* Herbert-West Decl. ¶ 5. In addition, the Trustee's
 28 Sale advanced by Quality was discontinued December 4, 2017 and to date a Trustee's
 Sale has not been held by Quality concerning the subject property 15844 148th Ave

1 NE Woodinville, WA 98072. *See, DKT #33 Exhibit 2* Herbert-West Decl. Ex. K.
 2 *See also DKT #33 Exhibit 1* Herbert-West Decl. ¶ 19.

3 The record before this Court provides Quality had evidence and information
 4 at the time the nonjudicial foreclosure was advanced to indicate to Quality that
 5 Ocwen and Deutsch Bank *had* a present right to possession of the property claimed
 6 as collateral through an enforceable security interest. In the alternative, even in the
 7 event Quality is to be considered a "debt collector" based on Ocwen and Deutsch
 8 Bank *not* (potentially) having a present right to possession of the property claimed
 9 as collateral through an enforceable security interest, Quality would still be exempt
 10 under one of the FDCPA's express exceptions to that definition. As the FDCPA
 11 excludes from the term "debt collector" an entity whose activities are "incidental to
 12 . . . a bona fide escrow arrangement." 15 U.S.C. § 1692a(6)(F). As in *Ho v.*
 13 *Recontrust Co., NA*, 858 F.3d 568, 574-75 (9th Cir. 2017) a Washington mortgage
 14 trustee— holds legal title on behalf of the borrower and lender—functions as an
 15 escrow. Under established Ninth Circuit law even if Quality's activities could be
 16 characterized as collection, they are "incidental to" the escrow arrangement because
 17 they are for the sole benefit of the lender. *See Rowe v. Educ. Credit Mgmt. Corp.*,
 18 559 F.3d 1028, 1034-35 (9th Cir. 2009) (construing "incidental to"). *See Vien-*
Phuong Thi Ho v. Recontrust Co., NA, 858 F.3d 568, 574-75 (9th Cir. 2017).

19 There are no genuine issues of material fact in dispute and the Plaintiffs have
 20 no claims for relief as against Quality under the FDCPA specifically Section 15
 21 U.S.C. § 1692k. The FDCPA cause of action pled against Quality fails under
 22 application of the law and should be dismissed with prejudice.

23 **B. IN WASHINGTON THE DEED OF TRUST TRUSTEE DOES NOT**
 24 **HAVE A FIDUCIARY DUTY TO ANY PARTY.**

25 In Washington, the non-judicial foreclosure Trustee owes a duty of good faith
 26 to the borrower, beneficiary, and grantor under a Deed of Trust. RCW 61.24.010(4).
 27 Under Washington Law the Trustee *does not have* a fiduciary duty to any party.
 28 Plaintiffs in support of their allegation that Quality breached its fiduciary duty owed

1 by wrongfully commencing the foreclosure process, allege based on information and
 2 belief (only) that the attorneys and employees of Quality have access to Ocwen's
 3 accounting system. **DKT 35** Amended Compl. ¶ 33. This allegation is without merit.
 4 Even if this fact was dispute (which it is not) Washington Law prohibits pre-sale
 5 damages claims under the Deed of Trust Act ("DTA") which includes a breach of
 6 the Trustee's duty of good faith under RCW 61.24.010(4); "[T]here is no actionable,
 7 independent cause of action for monetary damages under the DTA based on DTA
 8 violations absent a complete foreclosure sale." *Frias v. Asset Foreclosure Servs.*,
 9 Inc., 181 Wn.2d 412, 429 (2014). Here there has been no completed Trustee's Sale,
 10 therefore there is not an actionable or independent cause of action for monetary
 11 damages under the DTA.

12 For this Court to find that Plaintiffs were owed a fiduciary duty by Quality and
 13 are entitled to pursue a cause of action for DTA violations based on the action of a
 14 Trustee absent a completed foreclosure sale, this Court would be setting new
 15 precedent in direct conflict with established Washington State Supreme Court
 16 jurisprudence. The record indicates that Quality does not have access to Ocwen's
 17 accounting system and that Quality was provided information from Ocwen that the
 18 subject loan was in default. *See, DKT #33 Exhibit 1* Herbert-West Decl. ¶ 7.
 19 Moreover, Plaintiffs' allege Quality failed to comply with its duty of good faith and
 20 "simply chose to ignore Plaintiffs' pleas and refused to provide any indicating that it
 21 would stop the foreclosure." This allegation is also not supported by the record in
 22 this case and is without merit. As to this non-judicial previously advanced, Quality
 23 placed the non-judicial foreclosure advanced on hold May 5, 2017 to review and
 24 escalate the issues raised concerning the Plaintiffs' default. *See DKT #33 Exhibit 1*
 25 Herbert-West Decl. ¶ 15. Quality received confirmation from Ocwen that the loan
 26 remained in default and was requested by Ocwen to proceed with the Plaintiffs' non-
 27 judicial foreclosure action after receiving confirmation the loan remained in default.
See DKT #33 Exhibit 1 Herbert-West Decl. ¶ 16.

28 As stated above, the Trustee's Sale for this matter was cancelled December 4,

1 2017 with Quality having recorded a Notice of Discontinuance. *See DKT #33*
 2 **Exhibit 1** Herbert-West Decl. ¶ 19. *See also, DKT #33 Exhibit 2* Herbert-West
 3 Decl. Ex. K. Here, the record reflects that the Trustee conducted a due diligence
 4 review and requested confirmation from Ocwen to confirm the default before
 5 continuing to advance the previously noted subject non-judicial foreclosure. The
 6 Trustee attempted to determine the status of the default and received conflicting
 7 information from the parties to whom the Trustee owed a duty of good faith to both.
 8 As a result of the existence of this dispute, the Trustee's Sale that was originally
 9 scheduled to be held August 11, 2017 was postponed by the Trustee on August 10,
 10 2017 for a period of two weeks under an exercise of the Trustee's Duty of Good
 11 Faith and Trustee's discretionary authority pursuant to RCW 61.24.040(10) to allow
 12 the Plaintiffs the opportunity to seek an order restraining sale. *See DKT #33 Exhibit*
 13 **1** Herbert-West Decl. ¶ 17. As of the date of this pleading there has been no Trustee's
 14 Sale held by Quality as to the subject property 15844 148th Ave NE Woodinville,
 15 WA 98072. *See DKT #33 Exhibit 1* Herbert-West Decl. ¶ 19.

16 There are no genuine issues of material fact in dispute and the Plaintiffs have
 17 no claims for relief as against Quality under a theory Quality violated its duty owed
 18 to the Plaintiffs. Under Washington Law Quality does not owe a fiduciary duty to
 19 any party. This breach of Fiduciary Duty cause of action pled against Quality fails
 20 under application of the law and should be dismissed with prejudice.

21 **E. PLAINTIFFS' CPA CLAIM FAILS AS A MATTER OF LAW.**

22 Plaintiffs allege that “[e]ach defendant's conduct is a per se violation of the
 23 Consumer Protection Act and also constitutes unfair and deceptive practices in
 24 violation of RCW 19.86.” DKT 35 Amended Compl. ¶ 57. Plaintiffs appear to assert
 25 that all of the defendants, without differentiation, violated the CPA in connection
 26 with trying to foreclose on the Deed of Trust. The CPA prohibits “[u]nfair methods
 27 of competition and unfair or deceptive acts or practices in the conduct of any trade
 28 or commerce.” RCW 19.86.020. In order to prove a CPA claim, a private plaintiff
 must plead and present evidence of (1) an unfair or deceptive act or practice, (2)

1 occurring in trade or commerce, (3) that impacts the public interest, (4) injury to
 2 plaintiff's business or property, and (5) which injury is causally related to unfair or
 3 deceptive act. *First State Ins. Co. v. Kemper Nat'l Ins. Co.*, 94 Wash. App. 602, 608-
 4 09 (1999); *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wash.
 5 2d 778, 780 (1986). Failure to meet any one of these elements under the CPA is fatal
 6 to the claim and requires dismissal. *Sorrel v. Eagle Healthcare*, 110 Wash. App. 290,
 7 298 (2002). Technical violations of the DTA do not constitute unfair or deceptive
 8 acts or practices actionable under the CPA absent a showing of materiality or
 9 prejudice. *Meyer v. U.S. Bank N.A.*, 2015 U.S. Dist. LEXIS 77235, 6-7 (W.D. Wash.
 10 June 9, 2015).

11 Plaintiffs' Complaint lacks allegations of an "unfair or deceptive act or
 12 practice" and for this basis alone requires the instant motion for summary judgment
 13 to be denied. To establish this first CPA element, a plaintiff must allege an unfair or
 14 deceptive act or practice that actually deceived or had "the capacity to deceive a
 15 substantial portion of the public." *Hangman Ridge*, 105 Wash. 2d at 785. The CPA
 16 does not define the term "deceptive," but implicit in that term is "the understanding
 17 that the actor misrepresented something of material importance." *Hiner v.
 Bridgestone/Firestone, Inc.*, 91 Wash. App. 722, 730 (1998).

18 In this case the Complaint lacks any allegation that Quality engaged in a
 19 deceptive act or practice that could possibly amount to material misrepresentations.
 20 At best, Plaintiffs allege Quality had access to Ocwen's accounting system and
 21 therefore should have been able alone and without assistance from Ocwen to rectify
 22 or verify the status of the default. Quality has provided evidence they do not have
 23 this access. Moreover that the Trustee has provided evidence when presented with
 24 the opportunity it escalated Plaintiffs' accounting issue to Ocwen to confirm the
 25 status of the default before proceeding with the previously scheduled Trustee's Sale.
 26 Plaintiffs have made no allegations that they have been deceived by the actions of
 27 Quality.

28 Second, the Complaint fails to allege any conduct by Quality that impacts the

1 public interest—the second required element of a CPA claim. Every private plaintiff
 2 asserting a CPA claim must show that the acts complained of affect the public
 3 interest, which fulfills the legislative statement of purpose, that the Act “shall not be
 4 construed to prohibit acts or practices which . . . are not injurious to the public
 5 interest.” *Hangman Ridge*, 105 Wash. 2d at 788. The factors to be considered when
 6 evaluating this element depend upon the context in which the alleged acts were
 7 committed. *Id.* at 789-790. Where, such as here, the acts complained of involve a
 8 consumer transaction, the following five factors are relevant:

- 9 (1) Were the alleged acts committed in the course of defendant’s business?
- 10 (2) Are the acts part of a pattern or generalized course of conduct?
- 11 (3) Were repeated acts committed prior to the act involving plaintiff?
- 12 (4) Is there a real and substantial potential for repetition of defendant’s conduct
 after the act involving plaintiff?
- 13 (5) If the act complained of involved a single transaction, were many consumers
 affected or likely to be affected by it? *Id.* at 790.

14 Considering these factors and the allegations in the Amended Complaint,
 15 Plaintiffs have failed to plead facts necessary to meet this element as to Quality.
 16 There are no allegations that the purported conduct of Quality is part of a pattern of
 17 conduct; that there were repeated acts prior to the allegations concerning Plaintiffs;
 18 that there is risk of repeat; or that many consumers were affected. Indeed, the sparse
 19 allegations involving Quality do not even establish a violation of any state or federal
 20 laws as noted above. Plaintiffs’ mortgage loan was a private transaction, and the
 21 Complaint fails to include sufficient allegations meeting the public interest element
 22 of a CPA claim.

23 Finally, the Amended Complaint does not include sufficient facts to establish
 24 causation based on the action of Quality. Causation requires at least some credible
 25 allegations of a causal link between the alleged misrepresentation and the purported
 26 injury. See *Indoor Billboard v. Integra Telecom*, 162 Wash. 2d 59, 63 (2007). In
 27 *Indoor Billboard*, the Washington Supreme Court adopted the proximate cause
 28

1 standard embodied in WPI 15.01 for CPA claims, which requires a plaintiff to
2 establish that, but for the defendant's unfair or deceptive practice, the plaintiff would
3 not have suffered an injury. *Id.*

4 Here, the Complaint lacks any allegations against Quality that might establish
5 this necessary element as Plaintiffs have plead no alleged acts deceptive act or
6 practice conducted by Quality that could possibly amount to material
7 misrepresentations for which Plaintiffs can a purported injury. There are no genuine
8 issues of material fact in dispute and the Plaintiffs have no claims for relief as against
9 Quality under the CPA. The CPA cause of action pled against Quality fails under
10 application of the law and should be dismissed with prejudice.

VI. CONCLUSION

11 The record before this Court indicates that Quality advanced the subject
12 foreclosure pursuant to the information provided by the loan servicer and note holder,
13 when the trustee was presented the opportunity to conduct a review it did so and also
14 postponed the original Trustee's Sale to allow the Plaintiffs to seek all available
15 remedies, and no Trustee's Sale has been held. For the above outlined reasons
16 contained in Quality motion for summary judgment Quality requests the causes of
17 actions plead against Quality in Plaintiffs Amended Complaint be dismissed as there
18 are no genuine issues of material facts in dispute and dismissal of Quality is
19 appropriate as a matter of law

21 Dated: February 5, 2019
22

23 /s/ Robert William McDonald

24 Robert William McDonald, WSBA #43842
Attorney for Quality Loan Service Corp. of Washington